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Petitioner,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968.

No. .....

FOOD STORE EMPLOYEES UNION, LOCAL NO. 347, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO,

Petitioner,

vs.

GISSEL PACKING CO., INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

Food Store Employees Union, No. 347, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO (hereinafter sometimes referred to as the Union or petitioner), Intervenor in the proceedings below, petitions for a writ of certiorari, to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case. The Solicitor General filed a petition for

certiorari in this case on behalf of the National Labor Relations Board on September 26, 1968.[1]

OPINIONS BELOW.

The opinion of the Court of Appeals (App. A, pp. 1a-3a) is reported at 398 F. 2d 336 (4 Cir. 1968).[2] The decision and order of the National Labor Relations Board (App. C, pp. 6a-76a) are reported at 157 NLRB 1065.

JURISDICTION.

The judgment of the Court of Appeals was entered on June 28, 1968 (App. B, pp. 4a-5a). The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTIONS PRESENTED.

1. Whether unambiguous authorization cards signed by a majority of employees unequivocally designating a union to represent them in respect to wages, hours and conditions of employment, are so inherently unreliable that an employer may refuse to recognize a union so designated with-

1. The Solicitor General has petitioned for a writ of certiorari to review three judgments of the United States Court of Appeals for the Fourth Circuit, including the instant case. *(N. L. R. B.* v. *Gissel Packing Company, Inc.; N. L. R. B.* v. *Heck's; N. L. R. B.* v. *General Steel Products, Inc.).* It should be noted that this Union was a charging party in the *Heck's* case before the National Labor Relations Board but failed to intervene in the proceeding before the Fourth Circuit—which is the only reason that the Union does not petition for a writ of certiorari therein.

2. For the convenience of the Court and in order to avoid duplication of the record, references to proceedings below are keyed to the National Labor Relations Board's petition for certiorari. The term "App." shall refer to the Appendices to the Petition filed with this Court heretofore by the National Labor Relations Board. The term "J.A." shall refer to the Joint Appendix originally filed with the Court of Appeals for the Fourth Circuit, recently filed with this Court by the National Labor Relations Board.

out violating Section 8(a)(5) of the National Labor Relations Act, as amended.

2. Whether the National Labor Relations Act, as amended, imposes the duty to recognize a union upon an employer only under circumstances: (1) where the union has been certified by the National Labor Relations Board after a Board conducted election or (2) where it can be proved that an employer has *actual knowledge* (by means other than authorization cards) that a union represents a a majority of its employees in an appropriate unit.

STATUTE INVOLVED.

The relevant provisions of the National Labor Relations Act (61 Stat. 136, 73 Stat. 519, 29 U. S. C. 151, *et seq.*) are set forth in Appendix J, pp. 216a-217a and in the Supplemental Appendix, *infra*, pp. 27-30.

STATEMENT.

A. The Board's Finding of Fact.

In 1960, Gissel Packing Company, Inc., hereinafter referred to as the Company or Respondent, reacted to a Union organizing campaign by engaging in threats to refuse to bargain with the Union, to close its plant located in Huntington, West Virginia, or greatly curtail its operations, and to discriminate against employees who joined the Union; the Company also implied that the employees would be given the benefit of group insurance if they rejected the Union (App. C. pp. 14a-16a).[3] In 1963, shortly after employee Mount was hired, Company Vice President Charles Gissel told him that the shop was non-union and that any employee "caught" talking to a Union representative would be discharged (App. C, p. 27a).

3. After a hearing, a Trial Examiner found the above actions of the Company to be unfair labor practices violative of Section 8(a)(1) of the Act. No exceptions were filed to the Trial Examiner's Intermediate Report (App. C., p. 15a).

In September 1964, aware of the Union's activities at two other Huntington plants,[4] Vice President Charles Gissel individually interrogated employees Frye and Mount as to whether they had engaged in conversations concerning the Union and threatened them with discharge if either was caught talking to a suspected Union agent (App. C, pp. 26a-27a).

The Union resumed its organizing efforts in January 1965,[5] and between January 13 and 22, thirty-one of the forty-seven unit employees signed cards[6] authorizing the Union to represent them in collective bargaining (App. C, pp. 16a, 27a). In January, employee Adkins heard Vice President Gissel say that "[i]f the Union got in, he'd just take his money and let the Union run the place the way they wanted to" (App. C, p. 32a).

On January 22, Union representative Spencer advised Vice President Gissel that the Union represented a majority of employees and requested recognition and bargaining; Gissel refused "to talk about the Union" and referred Spencer to the Company's attorneys (App. C. pp. 16a-17a). The same day, Spencer confirmed his telephone request for recognition in a letter to Gissel in which he offered to submit signed authorization cards to the Company, "so that there will be no possible doubt as to our majority status" (App. C, pp. 16a-17a).[7]

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4. Unfair labor practice hearings involving *S. S. Logan Packing Co.*, 152 NLRB 421, and *Sehon Stevenson & Co., Inc.*, 150 NLRB 675, had been held in Huntington, West Virginia in the summer and September of 1964, respectively.

5. All dates hereafter shall refer to the year 1965, unless otherwise specified.

6. The cards stated: "The undersigned hereby authorizes this Union to represent his or her interests in collective bargaining concerning wages, hours, and working conditions" (App. C, pp. 24a-25a).

7. Spencer's letter noted that truck drivers were to be included in the requested unit.

On January 26, the Company rejected the Union's request in a letter which: (1) stated (a) that the Union had lost an earlier NLRB election[8] and that the Company did "not believe that there has been any change in circumstance or opinion of our employees since that time" (b) that the Company was "advised" that the Union's organizing technique involved the obtaining of "signatures on so-called authorization cards by a variety of means and representations which are not compatible with a free exercise of an employee's choice", including information "of instances of direct misrepresentation in obtaining employees' signatures", (2) denied that truck drivers were "a part of any appropriate bargaining unit", and (3) invited the Union to file for a Board election (App. C, pp. 17a-18a). At no time did the Company avail itself of the opportunity under Section 9(c)(1)(B) of the Act to petition for an election.

In the early part of February, Vice President Gissel (1) interrogated one employee as to whether he had heard anything about the Union and if any Union man had been around to sign him up, (2) asked employee Moore whether employee Don Kidd was the leader of the Union, stating that Kidd would be immediately discharged if Gissel discovered him to be such a leader, (3) requested Moore to report to Gissel all he could learn about the Union, including the names of the employees who had signed cards, (4) asked employee Frye (a) if he knew anything about the Union—(b) what the Union had offered him and (c) stated that he could offer Frye more than the Union could, (5) asked an employee if he would join in a "walk-out", (6) told a group of employees "[t]he hell with the Union * * * I'm going to leave [the plant] and turn it over to them,"

8. The election referred to was held shortly after January 27, 1961, in a unit of production and maintenance employees "including truck drivers [and] truck driver salesmen * * * (App. C, p. 14a).

(7) later in February said to a group of employees that he did not want "to hear any more about this Union stuff"—to "get out"—if they could not do their work, and (8) to another employee, Gissel threatened that the Union would have to "fight him first", stating that it would not "get in" (App. C. pp. 26a-33a).

In this context, on February 10, Spencer by letter renewed the Union's request for recognition, pointing out that "[t]he coercion and intimidation and illegal interrogation and threats which occur between the time an election is petitioned and the actual election by the employers is most difficult for us to combat" (App. C, pp. 18a-19a). Spencer again offered to deliver the signed cards to the Company for check against payroll records to prove the Union's majority (App. C, pp. 18a-19). Vice President Gissel answered on February 12, asserting that the Union's "approach * * * bolsters our opinion that you do not really honestly represent a majority of the employees." No other reason for doubting the Union's majority was given (J. A. 241). Replying on February 16, the Union made a final unsuccessful attempt to achieve recognition from the Company, again offering the authorization cards for inspection (App. C, p. 20a).

In March and April the Company continued its anti-Union campaign (1) by interrogating employee Burchell as to whether employee Mount had said anything about a Union, directing him to stay away from Mount, who would be "bad" for him (App. C, p. 31a), (2) by further inquiring of Burchell as to whether employee Hysell had induced Burchell to attend a Union meeting or sign a card (App. C, p. 31a), (3) by engaging in surveillance of a Union meeting (App. C, pp. 33a-36a), (4) by asking Mount, in the presence of Frye, whether he attended the meeting, telling him Gissel had knowledge of such Union meeting attendance (App. C, p. 38a), and (5) by changing the hours

of work of Mount and Frye and subsequently discharging them with a profane reference in respect to what they could do with the Union (App. C, pp. 38a-40a).

Majority.

As noted above, thirty-one employees signed Union authorization cards in a unit of forty-four to forty-seven employees (App. C, pp. 16a, 27a). There is no evidence that any of the employees later changed his mind about designating the Union to represent him, but the record reflects evidence that a substantial number of employees, "perhaps all but three," attended a Union meeting in April (App. C, p. 37a).

B. The Board's Conclusion and Order.

The Board concluded that the Company interfered with, restrained and coerced employees in violation of Section 8(a)(1) of the Act by interrogating employees about their Union activities and the conduct of the Union, asking them to learn of the Union activities of others, threatening them with discharge, promising economic benefits, and creating the impression of and engaging in surveillance; the Board also concluded that employees Mount and Frye were discriminatorily discharged in violation of Section 8(a)(3) and (1), and further concluded that the Company violated Section 8(a)(5) and (1) of the Act in respect to its refusal to recognize the Union which had been designated by a substantial majority of employees by their execution of unequivocal authorization cards in a clearly appropriate unit (App. C, pp. 67a-68a).

The Board rejected the claim that the Company had a

good faith doubt as to the Union's majority status[9] for the reasons that (1) it ignored the Union's offer to submit for examination and comparison with payroll signatures the signed authorizations upon which the Union relied; (2) it failed to file an employer's representation petition with the NLRB; (3) its asserted reasons for refusing to recognize the Union were unsubstantiated or insubstantial;[10] (4) its course of unfair labor practice conduct both before and after the Union's request for recognition constituted (a) an "absolute refutation" of the Company's good faith claim, (b) a program to destroy the Union's majority, and (c) "a positive rejection by the Company of the principle of collective bargaining." The Board also

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9. The Trial Examiner, after finding that the Company's refusal to bargain was not motivated by a good faith doubt of the Union's majority, noted that "there is language in *International Ladies' Garment Workers Union (Bernhard-Altmann)* v. *N. L. R. B.*, 366 U. S. 731, 738-740, which suggests that a good faith doubt concerning the Union's majority is no defense to a refusal to bargain if the Union in fact represented a majority." (App. C, p. 58a.) The Board stated that it "need not" rely upon the Trial Examiner's interpretation of the *Bernhard-Altmann* case, *op. cit.*, in concluding that Respondent violated Section 8(a)(5) of the Act (App. C, p. 7a, fn. 2).

10. (1) No evidence was presented to support the Company's charge that authorization cards were obtained by misrepresentation or other means incompatible with a free exercise of an employee's choice (App. C, p. 54a).

(2) The Company understood that the Union's requested unit was the same as that found by the Board to be appropriate in 1961. The Board, citing *Florence Printing Co.* v. *N. L. R. B.*, 333 F. 2d 289, 291 (4 Cir. 1964), held further "that 'even if the company entertained doubt [as to the appropriateness of the unit], it is no defense to a refusal to bargain charge where the unit is proper'" (App. C, p. 52a).

(3) The Company's evidence that its representatives "decided that maybe they [the Union] might not have a majority" because it lost an NLRB election four years earlier was inconsistent with the frequently exercised right of employees to change their minds. The Board further found that a similar argument had been rejected by the Fourth Circuit in *N. L. R. B.* v. *Overnite Transportation Company*, 308 F. 2d 279, 283 (4 Cir. 1962) (App. C, pp. 53a-54a).

rejected the contention of the Company that a Union can never establish its majority on the basis of cards but can do so only in a Board-conducted election[11] (App. 1, pp. 52a-58a).

The Board ordered the Company to cease and desist from the unfair labor practices found, to offer reinstatement with back pay to the employees discriminatorily discharged, to bargain with the Union upon request, and to post appropriate notices (App. C, pp. 71a-76a).

C. The Decision of the Court of Appeals.

The Court held that substantial evidence supported the Board's findings that the Company coerced its employees in the exercise of their rights in violation of Section 8(a)(1) of the Act and discriminatorily discharged two employees because of their Union membership and activity in violation of Section 8(a)(3) and (1) (App. A, p. 2a). The Court rejected the Board's conclusion that the Company had refused to bargain in violation of Section 8(a)(5) and (1). *Inter alia*, the Court said (App. A, p. 3a):[12]

> In recent cases we have had occasion to point out that

11. In finding a violation of Section 8(a)(5), the Board relied upon this Court's decision in *United Mine Workers of America* v. *Arkansas Oak Flooring Company*, 351 U. S. 62, 74-75 (1956); the Fourth Circuit's decisions in *Florence Printing Co.* v. *N. L. R. B.*, 333 F. 2d 289, 291, 292 (4 Cir. 1964); *N. L. R. B.* v. *Overnite Transportation Company*, 308 F. 2d 279, 283 (4 Cir. 1962) and *N. L. R. B.* v. *Inter-City Advertising Co.*, 190 F. 2d 420, 422 (4 Cir. 1951); and the following decisions in other circuits: *N. L. R. B.* v. *Philamon Laboratories, Inc.*, 298 F. 2d 176, 179 (2 Cir. 1962); *N. L. R. B.* v. *Wheeling Pipe Line, Inc.*, 229 F. 2d 391, 393 (8 Cir. 1956); *N. L. R. B.* v. *Trimfit of California, Inc.*, 211 F. 2d 206, 209 (9 Cir. 1954) (App. C, pp. 56a-58a).

12. The Court made reference to the Company's claimed doubt of the Union's majority "buttressed by the fact that a few years earlier the Union had lost a valid secret election after a similar claim of majority status." The Court made no mention of the unfair labor practices of the Company which antedated the election (App. A, p. 3a).

authorization cards are such unreliable indicators of the desires of the employees that an employer confronted with a demand for recognition based solely upon them is justified in withholding recognition pending the result of a certification election.[3] The reasoning elaborated in those decisions applies with equal force here * * *.

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3. *Crawford Mfg. Co.* v. *NLRB*, 4 Cir., 386 F. 2d 367, cert. denied, 36 LW 3403, ... U. S. .....; *NLRB* v. *S. S. Logan Packing Co.*, 4 Cir., 386 F. 2d 562; *NLRB* v. *Sehon Stevenson Co., Inc.*, 4 Cir., 386 F. 2d 551; *NLRB* v. *Heck's Inc.*, 4 Cir., ... F. 2d ..... (decided this day).

1. The Alleged Unreliability of Authorization Cards.

To appreciate the full impact of the cryptic decision of the Fourth Circuit herein, it must be considered in the light of the cases cited in its opinion[13] and other of its recent decisions.[14] The Fourth Circuit's doctrine was first and most fully enunciated in *N. L. R. B.* v. *S. S. Logan Packing Co.*, 386 F. 2d 562, 565, where the Court held that "[i]t would be difficult to imagine a more unreliable method of ascertaining the real wishes of employees than a 'card check' * * *", that "[t]he unreliability of the cards * * * is inherent * * *" and that [386 F. 2d at 566]:

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13. Particularly inapposite is *Crawford Mfg. Co.* v. *N. L. R. B.*, 386 F. 2d 367 (4 Cir. 1967), certiorari denied, 390 U. S. 1028. That case presented issues involving the Board's *Cumberland Shoe* doctrine (*Cumberland Shoe Corp.*, 144 NLRB 1268, enforced, 351 F. 2d 917 (6 Cir. 1965)), and *Bernel Foam* doctrine (*Bernel Foam Products, Inc.*, 146 NLRB 1277) neither of which are involved in the instant case. In addition, in *Crawford op. cit.*, the Court found that considerable misapprehension in the minds of employees in respect to the purpose of the authorization cards was generated by representations of the Union's organizer—a fact not extant herein.

14. Such additional cases include: *General Steel Products, Inc.* v. *N. L. R. B.*, 398 F. 2d 339 (4 Cir. 1968); *Benson Veneer Co.* v. *N. L. R. B.*, 398 F. 2d 998 (4 Cir. 1968).

> An employer could not help but doubt the results of a card check as an indication of the wishes of employees, for there is nothing in the process to allay it. Unless the employer is extraordinarily gullible and unimaginative, he will at least suspect unreliability in the cards and their signatures.[15]

In *Logan, op. cit.* at pp. 567, 568, the Court suggested that upon the receipt of a Union's claim of majority and a request for recognition "[t]he natural response of an employer entertaining real doubt of the Union's claim is an affirmative investigatory one," and "[a] finding of a § 8(a)(1) violation out of such investigatory conduct of an employer tends to confirm his claim of good faith doubt of the Union's majority * * * But in typical cases, subsequent unfair labor practices have a tendency to prove only the employer's opposition to the Union's organizational efforts; they throw no light on his belief or disbelief of the Union's claim of majority status."[16]

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15. "In *N. L. R. B.* v. *Logan Packing Co.*, [386 F. 2d 562 (4 Cir. 1967)] decided this day, we have considered at some length the serious unreliability of signed authorization cards as an indication of the wishes of a majority of the employees. Because of the unreliability, they should not be accepted as proof of the union's claim of majority status, and an employer is entitled to doubt the union's claim as long as it is so unreliably founded." *N. L. R. B.* v. *Sehon Stevenson & Co., Inc.*, 386 F. 2d 551, 553 (4 Cir. 1967).

16. The Court specifically rejected its holding in *N. L. R. B.* v. *Overnite Transportation Co.*, 308 F. 2d 279 (4 Cir. 1962) that violations of § 8(a)(1) or (3) subsequent to a bargaining demand may constitute "a refutation of any good faith doubt of the union's claim of majority status." *Logan, op. cit.* at p. 568, fn. 23. In *N. L. R. B.* v. *Sehon Stevenson & Co., Inc., op. cit.*, after finding the employer guilty of two illegal discharges, restraint and coercion in violation of Section 8(a)(1) and (3), the Court said [at p. 554]:

> If we had no more in this case than the cards and the finding of violations of §§ 8(a)(1) and (3), the Board's order to bargain would not be enforced for the reasons we state today in *Logan*.

In *Benson Veneer Co.* v. *N. L. R. B.*, 398 F. 2d 998, 1000, 1002

2. The 1947 Amendments.

The Court further holds that the elimination in the 1947 amendments of the Act of the phrase "any other suitable method" from Section 9(c) withdrew from the Board the authority to order an employer to bargain with a union, absent an NLRB certification, unless factually the employer has no doubt (based upon evidence other than authorization cards) that the union represents a majority of the employees.[17]

(1968), the Fourth Circuit sustained the Board's findings that the employer had engaged in coercive interrogation, surveillance and threats in violation of Section 8(a)(1) and had discriminatorily discharged six employees in a unit of fifty-six, but held that such illegal conduct did not "undercut the substantiality of its [the employer's] doubts [of the Union's majority status]."

17. In *N. L. R. B.* v. *Sehon Stevenson & Co., Inc., op. cit.*, the Court specifically held that the employer's polling of employees gave him such actual knowledge of majority. Analyses of *N. L. R. B.* v. *Preiser Scientific, Inc.*, 387 F. 2d 143 (4 Cir. 1967) and *N. L. R. B.* v. *Lifetime Door Company*, 390 F. 2d 272 (4 Cir. 1968) and the corresponding Board decisions (*Preiser Scientific, Inc.*, 158 NLRB 1375 and *Lifetime Door Company*, 158 NLRB 13) disclose that the Fourth Circuit sustained each refusal to bargain order of the Board on the Court's view of actual knowledge of majority in each case.

REASONS FOR GRANTING THE WRIT.

1. Every Court of Appeals has accepted designation by a majority of the employees based upon signed authorization cards as a valid basis for imposing upon an employer the duty to recognize such union pursuant to Section 8(a)(5).[18]

Indeed, before 1967, the Fourth Circuit accepted the determination of the National Labor Relations Board, concurred in by all other Circuit Courts, that the request for recognition by a union possessing authorization cards executed by a majority of eligible employees in an appropriate unit impresses a duty upon the employer to recognize

18. This rule was accepted by the Courts before the 1947 amendments to the Act: *N. L. R. B.* v. *Bradford Dyeing Association*, 310 U. S. 318, 60 S. Ct. 918 (1940); *N. L. R. B.* v. *Clinton Hobbs Co.*, 132 F. 2d 249 (1 Cir. 1942); *N. L. R. B.* v. *Dahlstrom Metallic Door Co.*, 112 F. 2d 756 (2 Cir. 1940); *N. L. R. B.* v. *Schmidt Baking Co.*, 122 F. 2d 162 (4 Cir. 1941); *N. L. R. B.* v. *Piqua Munising Wood Products Co.*, 109 F. 2d 552 (6 Cir. 1940); *N. L. R. B.* v. *Sunshine Mining Co.*, 110 F. 2d 780 (9 Cir. 1940); see also: *Continental Oil Co.* v. *N. L. R. B.*, 113 F. 2d 473 (10 Cir. 1940), as well as thereafter: *N. L. R. B.* v. *Greenfield Components Corp.*, 317 F. 2d 85 (1 Cir. 1963); *N. L. R. B.* v. *Philamon Laboratories, Inc.*, 298 F. 2d 176 (2 Cir. 1962); *N. L. R. B.* v. *Clearfield Cheese Co.*, 213 F. 2d 70 (3 Cir. 1954); *Florence Printing Co.* v. *N. L. R. B.*, 333 F. 2d 289 (4 Cir. 1964); *N. L. R. B.* v. *Overnite Transportation*, 308 F. 2d 279 (4 Cir. 1962); *N. L. R. B.* v. *Greensboro Coca Cola Bottling Co.*, 180 F. 2d 840 (4 Cir. 1950); *N. L. R. B.* v. *American Manufacturing Co. of Texas*, 351 F. 2d 74 (5 Cir. 1965); *N. L. R. B.* v. *Nelson Mfg. Co.*, 326 F. 2d 397 (6 Cir. 1964); *N. L. R. B.* v. *Larry Faul Oldsmobile Co.*, 316 F. 2d 595 (7 Cir. 1963); *Jas. H. Matthews & Co.* v. *N. L. R. B.*, 354 F. 2d 432 (8 Cir. 1965); *Retail Clerks Local 1179 (John P. Serpa)* v. *N. L. R. B.*, 376 F. 2d 186 (9 Cir. 1967); *Snow & Sons* v. *N. L. R. B.*, 308 F. 2d 687 (9 Cir. 1962); *N. L. R. B.* v. *George Groh & Sons*, 329 F. 2d 265 (10 Cir. 1964); *International Union of United Automobile Workers (Aero Corp.)* v. *N. L. R. B.*, 363 F. 2d 702 (D. C. Cir. 1966); *International Union of United Automobile Workers (Preston Products Co.)* v. *N. L. R. B.*, 392 F. 2d 801 (D. C. Cir. 1967).

the union so designated. *Florence Printing Co.* v. *N. L. R. B.*, 333 F. 2d 289 (4 Cir. 1964); *N. L. R. B.* v. *Overnite Transportation*, 308 F. 2d 279 (4 Cir. 1962); *N. L. R. B.* v. *Greensboro Coca Cola Bottling Co.*, 180 F. 2d 840 (4 Cir. 1950). And, since the Fourth Circuit's pronouncement in *Logan*, that authorization cards are inherently unreliable and that the presentation of such cards to an employer *ipso facto* creates a doubt as to the union's majority designation, no Court of Appeals has accepted and several Courts have overtly rejected the *Logan* doctrine.[19] Analysis of the bases upon which the Fourth Circuit predicated the *Logan* doctrine suggests why it has not received hospitable acceptance by other Circuits.

First, the Court stated that the Board "fully recognized" the unreliability of authorization cards as a method of designating the employees' collective bargaining represen-

19. The First, Fifth and Sixth Circuits appear to have repudiated the *Logan* rationale [*N. L. R. B.* v. *Sinclair Co.*, 397 F. 2d 157, 161-162 (1 Cir. 1968); *N. L. R. B.* v. *Goodyear Tire & Rubber Co.*, 394 F. 2d 711, 712-713 (5 Cir. 1968); *N. L. R. B.* v. *Atco-Surgical Supports*, 394 F. 2d 659, 660 (6 Cir. 1968)]; the Second Circuit has spurned it [*N. L. R. B.* v. *United Mineral & Chem. Corp.*, 391 F. 2d 829, 836 (2 Cir. 1968); *N. L. R. B.* v. *Big Ben Department Store, Inc.*, 396 F. 2d 78, 82 (2 Cir. 1968); *Bryant Chucking Grinder Co.* v. *N. L. R. B.*, 389 F. 2d 565, 568 (2 Cir. 1967), certiorari denied .... U. S. ...., 88 S. Ct. 2055 (1968)]; and the Third and Tenth Circuits, without reference to *Logan* or the Fourth Circuit, have failed to follow or apply it. *Steel City Transport* v. *N. L. R. B.*, ... F. 2d .... (3 Cir. 1968), 67 LRRM 2589; *N. L. R. B.* v. *Merrill*, 388 F. 2d 514, 519 (10 Cir. 1968); see also *N. L. R. B.* v. *Quality Meats*, 387 F. 2d 176, 178 (3 Cir. 1967), where the Court, quoting Board language in *Sunbeam Corp.*, 99 NLRB 546, 550-551, out of context (see *infra*, p. 15, fn. 22), accepted the principle, often enunciated by the Board, that employer's rejection of a union's demand for recognition supported by authorization cards signed by a majority of unit employees is violative of Section 8(a)(5), unless the employer "has a 'good faith' doubt that the union actually commands the purported majority." In finding such a violation based upon an authorization card majority the Court, in substance, held that such cards are not inherently unreliable as interpreted by the Fourth Circuit in *Gissel* and *Logan*.

tative, citing *Sunbeam Corp.*, 99 NLRB 546, 550-551 (1952); *Midwest Piping & Supply Co:*, 63 NLRB 1060 (1945); *Novak Logging Co.*, 119 NLRB 1573 (1958).[20] The Court made no mention of the fact that each of those cases involved the effect to be given to authorization cards where one of two competing unions was seeking recognition of the employer[21] where dangers of violations of Section 8(a)(2) are manifest.[22]

In addition, the Fourth Circuit's decision that authorization cards are inherently unreliable[23] is predicated upon

20. *N. L. R. B.* v. *S. S. Logan Packing Co.*, 386 F. 2d 562, 565, fn. 8 (4 Cir. 1967).

21. See *Levi Strauss & Co.*, 172 NLRB No. 57, 68 LRRM 1338, 1342, fn. 10.

22. In two of the cases cited, *i.e. Sunbeam op. cit.* and *Novak Logging Co., op. cit.*, the Board found that the employer had illegally assisted one of the two competing unions in violation of Section 8(a)(2). In *Midwest Piping & Supply Co.*, 63 NLRB 1060, 1069-1071, 1075-1078, the Board held that the employer assisted a union in violation of Section 8(a)(1), *inter alia*, by entering into a union shop agreement with it at a time when the employer was apprised of another union's conflicting claim of representation and in the face of a representation proceeding then currently before the Board. Clearly, the Board in its experience and expertise is justified in differentiating between the use of authorization cards in (1) two-union situations and (2) situations where only one union is involved. *N. L. R. B.* v. *Universal Camera Corp.*, 340 U. S. 373 (1951).

23. In *Logan, op. cit.*, the Court had a basis for rejecting the authorization cards because of evidence of coercion. See concurring opinion: *N. L. R. B.* v. *Sehon Stevenson & Co.*, 386 F. 2d 551, 556 (4 Cir. 1967). In *N. L. R. B.* v. *Preiser Scientific Inc.*, 387 F. 2d 143, the possibility that the Fourth Circuit might limit its *Logan* doctrine to situations involving authorization cards impressed with coercion or misrepresentation loomed large, when it sustained the Board's Section 8(a)(5) order, stating at p. 144: "Particularly, the cards did not have the infirmities we found to render them unreliable under the principles we stated, and now reaffirm, in *Crawford Manufacturing Co., Inc.* v. *N. L. R. B.* (No. 11,040, 4 Cir. decided Oct. 27, 1967); *N. L. R. B.* v. *S. S. Logan Packing Company* (No. 10,355, 4 Cir., decided Oct. 27, 1967)." However, in the instant case and *N. L. R. B.* v. *Heck's, Inc.*, 398 F. 2d 337 (4 Cir. 1968), where there is no claim of misconduct in respect to the signing of

such authority as the "AFL-CIO Guidebook for Union Organizers",[24] a 1962 speech by Board Chairman McCullock[25] (sic) in which he set forth "data indicating some relationship" between the number of cards signed by employees and the number of Board elections won by unions,[26] a law student's conjecture on union authorization cards[27] and its own speculation as to what conceivably might occur in the solicitation of authorization cards.[28]

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any cards, it is clear that the Fourth Circuit has fashioned a rule of law to reject authorization cards, as an indicator of employees' union desires, irrespective of the absence of misrepresentation, coercion or taint of any kind.

24. *N. L. R. B.* v. *S. S. Logan Packing Co., op. cit.*, p. 565, fn. 9.

25. *Ibid.* p. 565 and fn. 10. In his concurring opinion in *N. L. R. B.* v. *Sehon Stevenson & Co., Inc.*, 386 F. 2d 551, 554-555 (4 Cir. 1967), Judge Sobeloff notes that "the only statistical study of cards, upon which the *Logan* opinion relies heavily, concludes: '[a]uthorization cards do have validity'."

26. No mathematical analysis can be relevant to the reliability of authorization cards. Experiences are all too frequent that Board election campaigns invite employer unfair labor practices, *General Shoe* interferences with fair election procedures [*General Shoe Corp.*, 77 NLRB 124, enforced, 192 F. 2d 504 (6 Cir. 1951), certiorari denied, 343 U. S. 904], long delays which chill the fervor of union adherents and multitudinous other factors which adversely affect the free choice of employees. Nor do the number of unfair labor practice charges or the number of objections to elections adequately illustrate the scope of employer interference with such employee free choice. Frequently unions fail to file such charges or objections because of futility arising from the inadequacy of Board remedies, the unlikelihood of success in re-run elections [See *e.g.*, Pollitt, NLRB Re-run Elections: A Study, 41 N. Car. L. Rev. 2091 (1963)], Board administrative problems, cost, internal union problems, further loss of prestige, etc.

27. *Union Authorization Cards,* 75 Yale L. J. 805 (1966).

28. Despite the intellectual erudition of the note writer and the Fourth Circuit, Congress has entrusted the Board, "whose findings within [the] field [of labor law] carry the authority of an expertness which courts do not possess and therefore must respect * * *", with the formulation of judgments on the basis of its "experience in dealing with a specialized field of knowledge", *Universal Camera Corp.* v. *N. L. R. B.*, 340 U. S. 474, 488, 71 S. Ct. 456, 465 (1950). Therefore, by the design of the Act, the exercise of the Board's expertise is paramount to scholarly conjecture or judicial speculation.

These factors seem an insufficient basis to digress from a long line of cases and well established legal principle.

2. This Court has accepted the principle that authorization cards are a valid basis by which a majority of employees may designate a union to represent them. *United Mine Workers* v. *Arkansas Oak Flooring Co.*, 351 U. S. 62, 76 S. Ct. 559, 564-565, 566 (1956); *International Ladies' Garment Workers Union (Bernhard-Altmann Co.)* v. *N. L. R. B.*, 366 U. S. 731, 739, 81 S. Ct. 1603, 1608 (1961); see *N. L. R. B.* v. *Bradford Dyeing Association*, 310 U. S. 318, 338-339, 60 S. Ct. 918, 928-939 (1940). In the *Arkansas Oak Flooring* case, *op. cit.*,[29] the Court held that a state court may not enjoin picketing by a union designated by a majority of eligible employees, the object of which was to obtain the employer's recognition, where the union had not filed affidavits and data then required under Section 9(f), (g) and (h) of the Act. The Court said [76 S. Ct. at 564-566]:

> Section 8(a)(5) declares it to be an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees, *subject to the provisions* of section 9(a)." * * * Section 9(a), [fn. 7 omitted] which deals expressly with employee representation, says nothing as to how the employees' representative shall be chosen [citations omitted]. It does not make it a condition that the representative * * * shall be certified by the Board, or even be eligible for such certification.[8] * * *
>
> 8. A Board election is not the only method by which an employer may satisfy itself as to the union's majority status [citations omitted].[30]

29. The basic issue in *Arkansas Oak Flooring* centered upon the rights of a labor organization which had failed to comply with Section 9(f), (g) and (h) of the Act and involved the problem of federal preemption.

30. The court cases cited by this Court in fn. 8 are all cases where authorization cards or other employee designations, such as signatures on a petition, were used as the predicate upon which majority representation was proved.

> Section 7 recognizes the right of the instant employees "to bargain collectively through representatives of their own choosing" and leaves open the manner of choosing such representatives when certification does not apply. The employees have exercised that right through the action of substantially more than a majority of them authorizing the instant union to represent them.
>
> Section 9(a) provides that representatives "designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining * * *.

The foregoing language of the Court explains its earlier statement that "[i]n the absence of any bona fide dispute as to the existence of the required majority of eligible employees, the employer's denial of recognition of the union would have violated Section 8(a)(5) of the Act" [76 S. Ct. at 563].[31] And "[t]hat fits this situation precisely" [76 S. Ct. 566].

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31. Courts of Appeals frequently have cited this Court's decision in *Arkansas Oak Flooring, op. cit.*, in support of their decisions to enforce NLRB bargaining orders based on union authorization cards. *N. L. R. B.* v. *Philamon Laboratories, Inc.*, 298 F. 2d 176, 179 (2 Cir. 1962); *N. L. R. B.* v. *Quality Markets Inc.*, 387 F. 2d 20, 23 (3 Cir. 1967); *Bilton Insulation Inc.* v. *N. L. R. B.*, 297 F. 2d 141, 144 (4 Cir. 1961); *Skyline Homes Inc.* v. *N. L. R. B.*, 323 F. 2d 642, 647 (5 Cir. 1963); *N. L. R. B.* v. *Universal Gear Service Corp.*, 394 F. 2d 396, 398 (6 Cir. 1968); *N. L. R. B.* v. *Winn-Dixie Stores, Inc.*, 341 F. 2d 750, 755 (6 Cir. 1965); *Borden Cabinet Corp.* v. *N. L. R. B.*, 375 F. 2d 891, 893 (7 Cir. 1967); *Jas. F. Matthews & Co.* v. *N. L. R. B.*, 354 F. 2d 432, 436 (8 Cir. 1965); *N. L. R. B.* v. *Ralph Printing & Lithographing Co.*, 379 F. 2d 687, 693 (8 Cir. 1967); See also: *Ruby* v. *American Airlines, Inc.*, 323 F. 2d 248, 254 (2 Cir. 1963); *District 50, U. M. W.* v. *N. L. R. B. (Pittsburgh Valve Co.)*, 234 F. 2d 565 (4 Cir. 1956); *District 50, U. M. W.* v. *N. L. R. B. (Bowman Transportation, Inc.)*, 237 F. 2d 585 (D. C. Cir. 1956).

In another context this Court has accepted the right of an employer to recognize a union predicated upon a majority status proved by signed authorization cards. In *International Ladies' Garment Workers Union (Bernhard-Altmann)* v. *N. L. R. B.*, 366 U. S. 731, 81 S. Ct. 1603 (1961), the primary issue involved was the recognition by the employer of a union which had not been designated by a majority of the employees. There the Court said [81 S. Ct. at 1608]:

> If an employer takes reasonable steps to verify union claims, themselves advanced only after careful estimate * * * he can readily ascertain their validity and obviate a Board election. We fail to see any onerous burden involved in requiring responsible negotiators to be careful, by cross-checking, for example, well-analyzed employer records with union listings or authorization cards. Individual and collective employee rights may not be trampled upon merely because it is inconvenient to avoid doing so.

There is no distinction in principle between the obligations of an employer under Section 8(a)(2) to cross-check authorization cards and the obligation imposed upon him in this respect under Section 8(a)(5).[32] Indeed, to hold that an employer has a right to recognize a union's majority status by virtue of authorization cards to avoid a Board election where the employer prefers such union, and to reject the obligation to recognize a union which tenders a

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32. The Court in *Bernhard-Altmann, op. cit.*, also said [81 S. Ct. at 1608-1609]: "[a]ssuming that an employer in good faith accepts or rejects a union claim of majority status, the validity of his decision may be tested in an unfair labor practice proceeding [citing Section 8(a)(5) in fn. 13]. If he is found to have erred in extending or withholding recognition, he is subject only to a remedial order requiring him to conform his conduct to the norms set out in the Act * * * no further penalty results. We believe the Board's remedial order is the proper one in such cases."

majority of valid, unambiguous authorization cards where the employer abhors the particular union, is to deny the employees the right to select the bargaining agent of their own choosing guaranteed in Section 7 of the Act.

3. Manifestly, the Fourth Circuit's rejection of authorization card Section 8(a)(5) violations is erroneous. Prior to *Logan*, every Court of Appeals, including the Fourth Circuit, recognized that the design of the Act left open to the employees the designation of the majority representative by means other than election and accepted as valid a designation by a majority of employees based upon signed authorization cards where neither coercion nor misrepresentation by the union in the obtaining of the cards was proved.[33] If Congress intended to change the results of such a long line of authority, it would have clearly demonstrated its intent to do so.[34]

But a reading of the legislative history of the 1947 amendments to the Act[35] reflects a contrary intention. The Bill passed by the House sought to amend Section 8(a)(5) to read as follows: "To refuse to bargain collectively with the representative of his employees currently recognized by the employer or certified as such under Section 9.", thus substituting the phrase "currently recognized by the employer or certified as such under Section 9" for the language "subject to the provisions of Section 9(a)." H. R. 3020, p. 21, I Legislative History of the Labor-Management Relations Act 1947, p. 178.

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33. See cases cited *supra*, p. 13, fn. 18, and *infra*, p. 22, fn. 39.

34. See *N. L. R. B.* v. *Gullett Gin Co.*, 340 U. S. 361, 365-366, 71 S. Ct. 337, 340-341 (1951); *N. L. R. B.* v. *Brooks*, 204 F. 2d 899 (9 Cir. 1953), affirmed, 348 U. S. 96, 75 S. Ct. 176 (1954).

35. The Fourth Circuit in *Logan* relied upon the Taft-Hartley amendments to Section 9(c) to conclude that the Board could not determine that a labor organization represented a majority of employees in a unit without the benefit of a Board-conducted secret ballot election.

The House Report on its version of the bill made it clear that certification under Section 9 would be the exclusive method of achieving recognition and that an employer would not violate Section 8(a)(5) by refusing to recognize a union designated by a majority of its employees, absent a Board certification. House Report No. 245 on H. R. 3020, p. 30, I Legislative History of the Labor-Management Relations Act 1947, p. 321.

The Senate bill retained the language of Section 8(a)(5) as written in the Wagner Act. S. 1126, p. 13, I Legislative History of the Labor-Management Relations Act 1947, p. 111; House Conference Report No. 510 on H. R. 3020, p. 7, I Legislative History of the Labor-Management Relations Act 1947, p. 511. In passing the Senate bill in preference to the altered House version, Congress rendered the refusal to bargain "subject to the provisions of Section 9(a)" and refused to foist upon Section 8(a)(5) the certification requirements of Section 9(c).[36] It is thereby difficult to see by what legerdemain changes wrought in Section 9(c) legitimately can be impressed by the Fourth Circuit on Section 8(a)(5) to divest the Act of a preexisting proscription against an employer's refusal to recognize where a union has been designated by a majority of eligible employees' execution of untainted authorization cards.

Section 9(c) under the Wagner Act provided that whenever a question concerning representation arose, the Board could investigate such controversy and certify a union representative after "a secret ballot of employees, or utilize any other suitable method to ascertain such representatives." The phrase "or utilize any other suitable method" was deleted from Section 9(c) in the final passage of the Taft-Hartley amendments. This deletion has prohibited the NLRB from issuing without an election a certification

36. See *United Mine Workers* v. *Arkansas Oak Flooring Co.*, 351 U. S. 62; 76 S. Ct. 559, 564-565, fn. 8.

based upon cards, petitions, strikes, statements signed by a majority of the employees, membership cards, membership applications, affidavits of membership signed by a majority of employees and various other methods of proof which had been accepted under the Wagner Act.[37] Clearly the deletion of the language "or utilize any other suitable method" goes no further than to prevent a *certification*[38] by the Board without an election. Since, as noted above, Congress rejected certification as a prerequisite to a refusal to recognize violation,[39] the elimination of the above phrase from

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37. See e.g.: *Delaware-New Jersey Ferry Co.*, 1 NLRB 85 (membership cards); *Atlantic Refining Co.*, 1 NLRB 359 (petition); *Rabkor Co., Inc.*, 1 NLRB 470 (strike participation); *Lykes Brothers Steamship Co., Inc.*, 2 NLRB 102 (sworn testimony); *Duplex Printing Press Co.*, 1 NLRB 82 (stipulation between parties); see also, NLRB, *First Annual Report*, pp. 103-104; NLRB, *Second Annual Report*, pp. 108-109.

38. With the inclusion of Section 8(b)(4) in the Act in 1947, *certification* by the Board took on an expanded significance as against *recognition* by an employer (Supp. App. *infra*, pp. 27, 29-30). See *General Box Co.*, 82 NLRB 678, 680-682; *Kennedy* v. *Warehouse & Distribution Workers Union, Local 688*, 37 LRRM 2496, 29 LC ¶ 69,736 (E. D. D. C. Mo. 1956); *Perry Norvell Co.*, 80 NLRB 225, 239.

39. It should be noted that despite the uniformity of decisions predicating Board bargaining orders on authorization card majorities between 1947 and 1959. *Joy Silk Mills* v. *N. L. R. B.*, 185 F. 2d 732 (D. C. Cir. 1950), certiorari denied, 341 U. S. 914; *N. L. R. B.* v. *Ken Rose Motors Inc.*, 193 F. 2d 769 (1 Cir. 1952); *N. L. R. B.* v. *Marcus Brothers*, 272 F. 2d 253 (2 Cir. 1959); *N. L. R. B.* v. *Clearfield Cheese Co.*, 213 F. 2d 70 (3 Cir. 1954); *N. L. R. B.* v. *Harris-Woodson Co.*, 179 F. 2d 720 (4 Cir. 1950); *N. L. R. B.* v. *Lewis Motor Co., Inc.*, 180 F. 2d 254 (5 Cir. 1950); *N. L. R. B.* v. *Armco Drainage & Metal Products Inc.*, 220 F. 2d 573 (6 Cir. 1955); *N. L. R. B.* v. *Taitel*, 261 F. 2d 1 (7 Cir. 1958); *N. L. R. B.* v. *Wheeling Pipe Line Inc.*, 229 F. 2d 391 (8 Cir. 1956); *N. L. R. B.* v. *Trimfit of California, Inc.*, 211 F. 2d 206 (9 Cir. 1954); *N. L. R. B.* v. *Hamilton*, 220 F. 2d 492 (10 Cir. 1955). Congress did not attempt in 1959 to amend Section 8(a)(5) or Section 9 to proscribe such action. See *N. L. R. B.* v. *Gullett Gin Co.*, 340 U. S. 361, 365-366, 71 S. Ct. 337, 340-341 (1951).

Section 9(c) could not affect the existing rights or obligations under Section 8(a)(5).[40]

4. The questions posed by the instant case involve a fundamental interpretation and application of the national labor law and are of far-reaching importance to industry and labor. The number of annual recognitions granted to unions based upon authorization card majorities has not been recorded. But there can be no doubt that the acceptance by the Board of union designations by such authorization card majorities has deterred employers in myriads of cases from refusing to recognize and bargain with unions

40. The only change in Section 9 of the Act wrought in 1947 which has relevance to a refusal to recognize violation of Section 8(a)(5) is the provision which accords the employer a right to file a petition for an election so that when he has a real doubt of the majority designation of the union no longer "* * * like Odysseus, [must] he stand * * * almost helpless as he makes the perilous passage between Scylla and Charybdis between a violation of Section 8(a)(2) if he recognizes and a violation of Section 8(a)(5) if he does not" [*N. L. R. B.* v. *Dan River Mills*, 274 F. 2d 381, 388-389 (5 Cir. 1960)]. In respect to the employer petition, Senator Taft said: "To determine whether this man really does represent his employees or not, the Bill gives him the right to go to the Board under those circumstances and say 'I want an election; I want to know who is the bargaining agent for my employee.'" 93 Congressional Record 3954, April 23, 1947, II Legislative History of the Labor-Management Relations Act 1947, p. 1013. The Fourth Circuit, prior to the enunciation of the *Logan* doctrine, had properly evaluated and applied the inclusion of subsection 9(c)(1)(B) in the Act where it held that "[i]f the company had any doubts [of the union's majority status] when it was approached by the union, it could have agreed to the private election suggested by the union or it could have itself petitioned the Board under Section 9(c)(1)(B) for a representation election. Refusing to pursue either course it acted at its peril" [*Flor[illegible] Printing Co.* v. *N. L. R. B.*, 333 F. 2d 289, 292 (4 Cir. 1964)]. In *N. L. R. B.* v. *Overnite Transportation Company*, 308 F. 2d 279 (4 Cir. 1962), the Court suggested that the employer could have sustained a claim that it "sincerely doubted the union's majority status * * * by checking the union cards against the payroll or by requesting the Labor Board to hold a representation election as is its right under Section 9(c)(1)(B) of the Act * * *". No observable change in the law or Congressional intent has rendered the words of the Fourth Circuit prior to *Logan* less true today.

so designated and thereby has avoided industrial strife which otherwise would interfere with the normal flow of commerce.

The doctrine of the Fourth Circuit applied in the instant case excises the vitals of the long-standing refusal to recognize doctrine based upon authorization cards accepted by the Board and the Courts. Were this Court to accept the decision below, the Board would be transformed into an agency stamping its approval on a violation of the Act that it was designed to correct. Clearly, thereafter, employers would shrink from ascertaining information as to actual majority thereby to avoid the duty to recognize.[41]

In the meantime, the geographic area encompassed by the Fourth Circuit constitutes an oasis in which sophisticated employers can avoid the full scope of their obligations to recognize unions designated by majorities of their employees by means other than Board conducted elections. In view of the provisions of Section 10(f), the unusual doctrine of the Court below can be applied to organizing campaigns of unsuspecting unions beyond the ambit of the geographic area of the Fourth Circuit [42] (see Supp. App. *infra*, pp. 28-29).

All considerations of sound labor policy require that this Court review the decision below and put an end to the gross misinterpretation of the National Labor Relations Act which is adopted in that decision.

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41. It would be an act of supererogation to detail to this Court the practical difficulty, if not impossibility, of proving actual knowledge by the employer that a majority of its employees have selected a union to represent them without benefit of some authorization card-type proof and short of unequivocally successful strike action.

42. It should be noted that in *Crawford Manufacturing Co.* v. *N. L. R. B.*, 386 F. 2d 367 (4 Cir. 1967), certiorari denied, 390 U. S. 1028, the unfair labor practices were committed in Emporia, Kansas, and jurisdiction was obtained by the Fourth Circuit by virtue of the employer's principal office being located in Richmond, Virginia.

CONCLUSION.

For the foregoing reasons it is respectfully requested that this Court issue its writ of certiorari to review the decision below.

Respectfully submitted,

ALBERT GORE,
Counsel for Petitioner.

JUDITH A. LONNQUIST,
JACOBS AND GORE,
201 North Wells Street,
Chicago, Illinois 60606,
Of Counsel.

SUPPLEMENTAL APPENDIX.

Additional relevant provisions of the National Labor Relations Act, prior to the 1959 amendments (61 Stat. 136, 73 Stat. 519, 29 U. S. C. Secs. 151, *et seq.*) are as follows:

Sec. 8—

(b) It shall be an unfair labor practice for a labor organization or its agents—

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, * * *

(c) for the purpose of forcing or requiring any employer to recognize or bargain with a labor organization as the representative of his employees, unless such labor organization has been certified as the representative of such employees under the provisions of Section 9(a);

and of the Act, as amended in 1959, as follows:

Sec. 10—

(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies

of this Act: *Provided,* That where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him; *And provided further,* That in determining whether a complaint shall issue alleging a violation of section 8(a)(1) or section 8(a)(2), and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the Board, or before an examiner or examiners thereof, such member, or such examiner or examiners, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed. • • •

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United

States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the Board, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive. * * *

(l) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8(b), or section 8(e) or section 8(b)(7), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary re-

straining order as it deems just and proper, notwithstanding any other provision of law: *Provided further,* That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period: *Provided further,* That such officer or regional attorney shall not apply for any restraining order under section 8(b)(7) if a charge against the employer under section 8(a)(2) has been filed and after the preliminary investigation, he has reasonable cause to believe that such charge is true and that a complaint should issue. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further,* That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organizations a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8(b)(4)(D) * * *.